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SENATE BILL 628

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE UNIVERSAL SERVICE
ACT OF NEW MEXICO; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Universal Service Act of New Mexico".

Section 2. DECLARATION AND PURPOSE. --

A. The legislature declares that it remains the
policy of this state to maintain for all customers availability
of access to basic telecommunications services at affordable
rates.

B. The purpose of the Universal Service Act of New
Mexico is to create a universal service fund that supplements
federal universal service mechanisms and helps ensure that all
residents of New Mexico, regardless of location or

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1 telecommunications carrier, have access to basic
2 telecommunications services at affordable rates.

3 Section 3. DEFINITIONS. -- As used in the Universal Service
4 Act of New Mexico:

5 A. "administrator" means the administrator of the
6 fund;

7 B. "affordable rates" means rates for basic service
8 that promote universal service within a local exchange area,
9 giving consideration to the economic conditions and costs to
10 provide service in the area in which service is provided;

11 C. "basic service" means local exchange telephone
12 service or its equivalent carried on flat rate or measured
13 residential or business lines at a subscriber's location that
14 includes:

- 15 (1) primary directory listing;
- 16 (2) touch tone dialing service;
- 17 (3) access to operator services;
- 18 (4) access to directory assistance services;
- 19 (5) access to 911 services;
- 20 (6) access to toll services; and
- 21 (7) low-income telephone assistance plans or
22 other assistance services;

23 D. "board" means the New Mexico universal service
24 fund board;

25 E. "commission" means the public regulation

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1 commi ssi on;

2 F. "eligible telecommunications carrier" means a
3 telecommunications carrier designated as eligible to receive
4 fund support in accordance with the Universal Service Act of
5 New Mexico;

6 G. "federal act" means the federal
7 Telecommunications Act of 1996;

8 H. "fund" means the New Mexico universal service
9 fund;

10 I. "incumbent local exchange carrier" means a
11 person that:

12 (1) was designated as an eligible
13 telecommunications carrier by the state corporation commission
14 in Docket #97-93-TC by order dated October 23, 1997, or that
15 provided local exchange service in this state on February 8,
16 1996; or

17 (2) became a successor or assignee of an
18 incumbent local exchange carrier;

19 J. "local exchange area" means a geographic area
20 encompassing one or more local communities, as described in
21 maps, tariffs or rate schedules filed with the commission,
22 where local exchange rates apply;

23 K. "local exchange service" means the transmission
24 of two-way interactive switched voice communications furnished
25 by a telecommunications carrier within a local exchange area;

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1 L. "long distance service" means telecommunications
2 service between local exchange areas that originates and
3 terminates within the state;

4 M. "telecommunications carrier" means a provider of
5 telecommunications services, except that the term does not
6 include aggregators of telecommunications services as defined
7 in the federal act; and

8 N. "telecommunications service" means the offering
9 of telecommunications for a fee directly to the public, or to
10 such classes of users as to be effectively available to the
11 public, regardless of the facilities used.

12 Section 4. NEW MEXICO UNIVERSAL SERVICE FUND BOARD--
13 APPOINTMENT-- DUTIES. --

14 A. The "New Mexico universal service fund board" is
15 created. The board shall consist of seven members as follows:

16 (1) one member representing incumbent local
17 exchange carriers with more than two hundred thousand access
18 lines;

19 (2) one member representing incumbent local
20 exchange carriers with two hundred thousand access lines or
21 fewer;

22 (3) one member representing long distance
23 carriers;

24 (4) one member representing other carriers;

25 (5) one member representing the commission;

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1 (6) one member representing the economic
2 development department; and

3 (7) one member representing the office of the
4 attorney general or another consumer advocate.

5 B. A majority of the members shall have a
6 background in telecommunications technologies or applications
7 and, with the exception of the representative of the economic
8 development department, be appointed by the commission.

9 Appointments shall be made for two-year terms. The initial
10 members of the board shall be appointed before June 1, 2003.

11 C. The board shall be administratively attached to
12 the commission.

13 D. The board members shall annually elect a chair
14 who shall make and receive all communications to and from the
15 board. The board shall meet at the call of the chair but not
16 less than quarterly. No vote of the board shall be held unless
17 a majority of the members is present. Board members shall not
18 vote by proxy.

19 E. Public members of the board shall be reimbursed
20 for per diem and mileage expenses pursuant to the Per Diem and
21 Mileage Act. All expenses of the board shall be paid from
22 expenditures of the fund.

23 F. Members of the board shall not be removed except
24 for incompetence, neglect of duty or malfeasance in office. No
25 removal shall be made without notice of hearing and an

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1 opportunity to be heard before the commission. A vacancy in
2 the membership of the board occurring other than by expiration
3 a of term shall be filled in the same manner as the original
4 appointment, but for the unexpired term only.

5 G. The board shall establish such rules for its own
6 operations as are necessary to achieve the purposes of the
7 Universal Service Act of New Mexico.

8 H. No later than August 1, 2003, the board shall
9 select a third-party administrator who shall, subject to the
10 oversight of the board, administer the fund. The administrator
11 shall collect, administer and disburse money from the fund
12 consistent with the provisions and purpose of the Universal
13 Service Act of New Mexico. The administrator shall have
14 competence and experience in managing state universal service
15 funds and telecommunications costing and pricing policies and
16 principles. The administrator shall be reasonably compensated,
17 and such compensation shall be paid directly from the fund.
18 The administrator shall at all times be independent from the
19 commission and, for the purposes of this section, neither the
20 commission or any member of its staff may be considered an
21 administrator. No later than September 30, 2004 and September
22 30 of each subsequent year, the administrator shall submit to
23 the board an accounting of all transactions within the fund.
24 The accounting shall be audited by an independent accounting
25 firm.

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1 I. On or before December 1 of each year, the board
2 shall report to the legislature. The report shall include
3 information on the status of the fund, historical and planned
4 surcharges, disbursements, receipts and the work done and fees
5 charged by the administrator. The board may require the
6 administrator to submit information necessary to prepare the
7 report.

8 Section 5. UNIVERSAL SERVICE FUND CREATED--SURCHARGE.--

9 A. Consistent with the provisions of the Universal
10 Service Act of New Mexico, the "New Mexico universal service
11 fund" is created to provide support to telecommunications
12 carriers for the provision, maintenance or upgrading of
13 facilities and services necessary to enable New Mexicans to
14 have equitable access to basic service at affordable rates,
15 regardless of location or telecommunications carrier. Money
16 deposited in the fund is not public money, and the
17 administration of the fund is not subject to the provisions of
18 law regulating public funds.

19 B. The fund shall be financed by a surcharge on all
20 intrastate retail telecommunications services, paid by
21 consumers and collected by the providers of the services to
22 which the surcharge applies, as a percentage of the services
23 charged to consumers. The amount of the surcharge shall be
24 implemented by the commission based solely upon the
25 determination of the administrator.

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1 C. The amount of the surcharge shall be sufficient
2 to meet the financial requirements of the fund, including the
3 expenses of the board, the expenses and compensation for the
4 administrator and the expenses and compensation for the
5 independent accounting firm performing the annual audit of the
6 fund.

7 D. Beginning July 1, 2003 through the period ending
8 December 31, 2003, the surcharge shall be one and one-half
9 percent of monthly intrastate retail telecommunications
10 services billings. By November 1, 2003, the administrator
11 shall determine and the commission shall implement an annual
12 surcharge rate to be effective January 1, 2004. By September
13 1, 2004 and each year thereafter by that date, the
14 administrator shall make a determination of the amount of the
15 surcharge necessary to provide ten million dollars
16 (\$10,000,000) in expenditures from the fund for the upcoming
17 year. In making such determinations, the administrator shall
18 consider any actual or projected surplus or shortfall in the
19 fund for the current year. When determining the amount of the
20 surcharge, the administrator shall exclude from revenue all
21 amounts from surcharges, gross receipts taxes, excise taxes,
22 franchise fees and similar charges. The administrator also
23 shall exclude from revenue all amounts of revenue from services
24 provided pursuant to a low-income telephone assistance plan
25 billed to end-user customers by a telecommunications carrier.

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1 Wireless and commercial mobile radio services carriers shall
2 determine their intrastate revenue for the subject reporting
3 period by application of the "safe harbor" presumption of
4 apportionment of interstate and intrastate revenues, as
5 prescribed by the federal communications commission for
6 purposes of computing contributions to the federal universal
7 service fund.

8 E. All telecommunications carriers shall collect
9 the surcharge on a uniform basis directly from their retail
10 end-user customers through imposition of a competitively
11 neutral, explicit, line item percentage charge on the
12 customers' billing statements, which shall commence with the
13 first billing period beginning after July 1, 2003. Customers
14 who are enrolled in a low-income telephone assistance plan
15 shall be exempt from the surcharge.

16 F. The commission shall implement the surcharge as
17 determined by the administrator by January 1, 2005, and each
18 year thereafter, effective January 1.

19 G. The commission shall require that the surcharge
20 be applied on all intrastate retail telecommunications services
21 in a competitively and technologically neutral manner.

22 H. Beginning with September 15, 2003, each
23 telecommunications carrier shall make payment to the
24 administrator for the fund representing the total monthly
25 surcharges collected in accordance with the Universal Service

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1 Act of New Mexico. The payment shall be remitted within forty-
2 five days after the end of each month.

3 Section 6. ELIGIBILITY FOR FUND SUPPORT. --

4 A. Fund support shall only be available to eligible
5 telecommunications carriers. No carrier or entity that does
6 not contribute to the fund shall be eligible to receive fund
7 support.

8 B. A contributor seeking designation as an eligible
9 telecommunications carrier shall file a petition with the
10 commission. The petition shall:

11 (1) include a description of the proposed
12 service area, consistent with the federal act, for which it
13 seeks designation; and

14 (2) demonstrate that the contributor is an
15 eligible telecommunications carrier as defined in the federal
16 act.

17 C. The commission shall, after notice and hearing,
18 enter its order approving or denying a contributor's petition.
19 An order approving a petition shall specify the service area
20 for which designation is made.

21 D. A telecommunications carrier designated as an
22 eligible telecommunications carrier as of June 30, 2003 shall
23 be deemed to be an eligible telecommunications carrier as of
24 that date without any further action by the commission.

25 E. An eligible telecommunications carrier receiving

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1 support from the fund shall self-certify annually to the
2 administrator by filing a sworn affidavit of an authorized
3 officer stating that it is qualified to participate in the fund
4 and that all support received from the fund was used for the
5 intended purpose of the fund.

6 F. In carrying out its duties pursuant to Section
7 254(e) of the federal act, the commission shall permit eligible
8 telecommunications carriers receiving support from the federal
9 universal service fund to self-certify annually to the
10 commission by filing a sworn affidavit of an authorized officer
11 stating that any support received by the eligible
12 telecommunications carrier from federal universal service funds
13 will be used only for the provision, maintenance and upgrading
14 of facilities for which the support is intended consistent with
15 the federal act. Within ten days after the receipt of the
16 self-certification, the commission shall submit to the federal
17 communications commission its written certification that the
18 eligible telecommunications carrier is eligible to receive
19 federal support during the applicable period and that the
20 carrier will only use the support for the provision,
21 maintenance and upgrading of facilities and services for which
22 the support is intended.

23 Section 7. DISTRIBUTIONS FROM THE FUND. --

24 A. The administrator shall provide one-time lump
25 sum distributions from the fund on a per-project basis to

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1 eligible telecommunications carriers to help support
2 telecommunications projects that meet the criteria for the
3 support and have been applied for by the eligible
4 telecommunications carrier and approved in advance by the
5 administrator. No distributions shall be made from the fund
6 for an approved project until the eligible telecommunications
7 carrier certifies to the administrator that the project has
8 been completed.

9 B. Eligible telecommunications carriers seeking
10 fund support shall apply for support from the administrator
11 through an application process approved by the board. The
12 administrator shall accept applications for distributions from
13 the fund from January 1 until March 31 of each year, commencing
14 in 2004. The application shall include, at a minimum:

- 15 (1) the description of the project;
- 16 (2) the size of the local exchange area where
17 the project will be located;
- 18 (3) an explanation as to why the project
19 furthers the goals of universal service in New Mexico;
- 20 (4) the total cost of the project;
- 21 (5) the revenues the company expects to
22 receive from the customers upon completion of the project;
- 23 (6) the number of requests the carrier has
24 received from individuals for the services covered by the
25 proposed project;

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1 (7) whether the project will benefit potential
2 end-user customers that are without access to basic service;
3 and

4 (8) the projected time frame in which the
5 project will be completed.

6 C. Applications timely received by the
7 administrator shall be considered together on or before June 1
8 of each year commencing in 2004. The administrator shall
9 deliver to the board and to all eligible telecommunications
10 carriers that timely filed an application a written decision on
11 the annual distribution from the fund. That decision shall
12 provide for distribution of the available amounts in the fund,
13 except for the portion required for the expenses and
14 compensation of the administrator, the expenses of the board
15 and the expenses and compensation of the independent accounting
16 firm retained to perform the annual audit of the fund.

17 D. The administrator shall make its distribution
18 decisions consistent with the following requirements:

19 (1) support shall be distributed only for
20 projects in local exchange areas with fewer than five thousand
21 access lines;

22 (2) an eligible telecommunications carrier
23 that collects from its customers a surcharge pursuant to the
24 Universal Service Act of New Mexico shall be eligible to
25 receive distributions from the fund if the eligible

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1 telecommunications carrier timely submits an application for
2 support from the fund that complies with the Universal Service
3 Act of New Mexico and furthers its purposes;

4 (3) support from the fund shall be limited to
5 recovery of the costs of provisioning, maintaining and
6 upgrading basic services. The costs that are eligible to be
7 recovered from the fund are limited to reasonable construction
8 costs, including material, labor and labor-related overheads,
9 construction and vehicle costs, engineering costs and right-of-
10 way and easement procurement costs. In determining the amount
11 of support that an eligible telecommunications carrier is
12 eligible to receive, the administrator shall offset the total
13 planned cost of the project with:

14 (a) the amount of estimated revenue that
15 the eligible telecommunications carrier will receive from the
16 provision of basic services to the end-user customers
17 benefiting from the project for a five-year period after the
18 project is completed;

19 (b) the amount of aid-to-construction
20 the eligible telecommunications carrier will charge to the end-
21 user customers in order to complete the project; and

22 (c) the estimated incremental amount of
23 federal high-cost loop support associated with the project that
24 the eligible telecommunications carrier will receive over a
25 five-year period after the project is completed;

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1 (4) the remaining costs, after taking the
2 offsets pursuant to Paragraph (3) of this subsection, shall be
3 eligible for support from the fund if all other criteria for
4 receiving support are met; and

5 (5) support shall not be provided for projects
6 in which a real estate developer could reasonably be expected
7 to pay for the costs of installing telecommunications services.

8 E. If, after applying the criteria of Subsection D
9 of this section, the total amount of funding requests in
10 applications timely received by the administrator is greater
11 than the total available money in the fund, the administrator
12 shall consider the following in determining the projects to be
13 funded:

14 (1) the amount of resources available in the
15 fund;

16 (2) the cost of the proposed project;

17 (3) whether the project will benefit potential
18 end-user customers that are without access to basic service;

19 (4) whether the area to be served by the
20 project in question is then unserved by any eligible
21 telecommunications carrier and should accordingly be given
22 higher priority than projects in areas already served by an
23 eligible telecommunications carrier;

24 (5) whether the proposed project is targeted
25 to primarily benefit residential customers;

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1 (6) with respect to projects that would
2 benefit a specific customer or a small group of residential
3 end-user customers, whether the normal aid-to-construction
4 charges to a residential customer would impede construction,
5 and should accordingly be given priority over projects where
6 the normal aid-to-construction charges would be less; and

7 (7) the extent to which the proposed project
8 would meet existing consumer demand and should accordingly be
9 given priority over projects that are based on anticipated
10 future consumer demand.

11 F. An eligible telecommunications carrier that
12 receives support from the fund shall account for the funds
13 received by crediting the amount received to the asset accounts
14 of the company, thereby reducing intrastate fixed assets of the
15 company by the amount of the support.

16 G. Commencing August 1, 2003, all
17 telecommunications carriers shall report to the administrator
18 on a monthly basis the total amount of revenue generated from
19 the billing of intrastate retail telecommunications services to
20 end users in the prior month and any information that the
21 administrator deems necessary to quantify or reconcile
22 contributions to the fund or distributions from the fund. The
23 information shall be provided to the administrator on a
24 confidential basis.

25 Section 8. TEMPORARY PROVISION--TRANSFER.--On the
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1 effective date of this act, any unexpended or unencumbered
2 balance remaining in the state rural universal service fund
3 shall be transferred to the New Mexico universal service fund.

4 Section 9. REPEAL. --Section 63-9H-6 NMSA 1978 (being Laws
5 1999, Chapter 295, Section 6) is repealed.

6 Section 10. EMERGENCY. --It is necessary for the public
7 peace, health and safety that this act take effect immediately.

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